IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 2ND NOVEMBER 2007 / 11TH KARTHIKA 1929

WP(C).No. 32664 of 2007(L)

PETITIONER:

BINNO JERAD LUIZ,
PROPRIETOR, ACE SYSTEMS, A9-I FLOOR, GCDA COMPLEX,
MARINE DRIVE, KOCHI-31.

BY ADV. SRI.VIJAYAN. K.U.
SRI.K.N.SREEKUMARAN

RESPONDENTS:
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1. COMMERCIAL TAX OFFICER,
COMMERCIAL TAX OFFICE, 3RD CIRCLE, ERNAKULAM-682515.

2. COMMERCIAL TAX OFFICER (AA),
OFFICE OF THE DY. COMMISSIONER (AA), ERNAKULAM-682515.

3. DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, ERNAKULAM-682 515.

4. INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, ERNAKULAM AT KAKKANAD-682530.

5. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.

BY GOVERNMENT PLEADER SRI.K.P.PRADEEP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.
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W.P.(C) NO. 32664 OF 2007 L
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Dated this the 2nd day of November, 2007

J U D G M E N T

Ext.P1 is an order of assessment, against which, petitioner has filed Ext.P2 appeal along with Ext.P2(b) stay petition. However, the appellate authority has taken the view that separate appeals are necessary and issued Ext.P5. It was in view of the defect as noted in Ext.P5 that the appellate authority has not considered the stay petition. In the meanwhile, revenue recovery proceedings has been initiated as per Ext.P3 and in the aforesaid circumstances, this writ petition has been filed.

2. The maintainability of common appeal was one of the issues raised in WP(C) No.26929 of 2007, which was disposed of by the judgment dated 10th September 2007 directing the appellate authority to consider that issue as well. It was directed that in case if the appellate authority finds that separate appeals are necessary, instead of treating the appeal as defective to realise additional court fee that would have been payable had there been separate appeals. In any way, the same course can be adopted in this case also.

3. In view of the above, I dispose of this writ petition

with the following directions:

1) The appellate authority shall, in view of the finding in Ext.P5 that separate appeals are to be filed, instead of treating the appeal as defective, shall realise additional court fee from the petitioner and proceed to treat the appeal as valid. The petitioner shall, within one week from the date of receipt of a copy of this judgment, remit the additional court fee payable.

2) Within two weeks of remittance of the additional court fee, the appellate authority shall consider and pass orders on Ext.P2(b) stay petition filed by the petitioner.

3) In the meanwhile, proceedings pursuant to Ext.P3 revenue recovery notice shall be kept in abeyance for a period of six weeks from today.

Petitioner shall produce a copy of this judgment before the 3rd respondent for compliance.

ANTONY DOMINIC, JUDGE.

Rp